

Remarks

Claims 1-17, 19-21, and 23-26 are pending in this patent application. Claims 1, 4, 5, 10, 12, 13, 17, 19, and 20 are amended herein. Claims 18 and 22 have been cancelled without prejudice and claims 25-26 are newly added.

Applicants respectfully request reconsideration of this application in light of the above amendments and the following remarks.

Rejection of Claims 1 and 20 under 35 U.S.C. § 112, P. 2

Claims 1 and 20 were rejected as being indefinite. These claims have been amended in order to provide antecedent basis for the various terms. Therefore, Applicants respectfully request that this rejection be withdrawn.

Rejection of Claim 1-5, 7-15, 17-20, 22 and 23 under 35 U.S.C. § 102(b) (Gale)

Claims 1-5, 7-15, 17-20, 22, and 23 have been rejected as being anticipated by U.S. Patent No. 5,975,300 to Gale. Applicants respectfully traverse this rejection. Gale discloses a cardboard box having inserts 81, 82, 83, 84 located adjacent the top and bottom flaps of the box. With regard to Applicant's independent claims 1, 12, and 20, first, each of these claims include divider members and standoff portions/members spaced or offset from each other. Gale does not include such walls or standoff portions. The Examiner's comments related to what he believes to constitute the dividers in Gale (Final Office Action, page 2) is unclear from the description provided. Clarification and reference to Gale's drawings is respectfully requested. Further, Applicant's claims include that the standoff portions (or members) extending into a container receiving area. As shown in Figure 4, Gale also does not standoff member which extend inwardly into a container receiving area. Still further, Gale does not disclose a unitary floor member, as claimed by Applicants. It is unclear how the Examiner defines unitary to include the Gale construction. Gale instead has major flaps and minor flaps on the top and bottom (see column 2, lines 64.)

Claims 5, 15, and 23 are directed to the bottom panel/floor having a bottom surface with receiving areas formed therein. Gale clearly does not show any such features on its

bottom surface. It is respectfully requested that the Examiner point out such features in Gale with specificity.

With regard to claims 14 and 20, Gale does not disclose the claimed "lid inner surface with a lid capture area formed therein." Gale's disclosed insert is not formed therein. With regard to amended claim 17, Gale's "docking posts 106" do not disclose Applicants claimed mating surface corresponding to the surface of the container. Accordingly, for these reasons, these rejected claims are not anticipated by Gale, and Applicants respectfully request that this rejection be withdrawn.

Rejection of Claim 1-19 under 35 U.S.C. § 102(b) (Apps '814)

Claims 1-19 have been rejected as being anticipated by U.S. Patent No. 5,351,814 to Apps. Applicants respectfully traverse this rejection. With reference to the Gale rejection above, Applicant's claims include divider members and standoff members/portions. Such features are not found in Apps. Claim 18 has been cancelled herein without prejudice. Applicants respectfully request that this rejection be withdrawn as to claims 1-17 and 19.

Rejection of Claim 1-4, 7, 8, 10- 13, 20 and 22 under 35 U.S.C. § 103(a) (Gale in view of Hammett '836 or Hepp)

Claims 1-4, 7, 8, 10-13, 20 and 22 are rejected as obvious over Gale in view of U.S. Patent No. 4,700,836 to Hammett or U.S. Patent No. 5,335,814 to Hepp. (Claim 22 is cancelled without prejudice herein.) Applicants respectfully traverse this rejection. Gale expressly teaches away from the present invention. Gale states that "it is the object of the present invention to provide a shipping container for glass bottles which makes it possible to eliminate the use of vertical partitions within the carton." (See Gale, column 1, lines 23-26, underline added.) The present claims, on the other hand, include divider members. Further, Gale suggests against a combination with Hammett or Hepp to achieve the claimed invention. Gale's full-depth cardboard box includes upper and lower inserts for support. Hammett and Hepp, on the other hand, are low depth containers without walls or any kind of upper container support. Applicant asserts that one skilled in the art would not combine these references, and even if such a combination were made, it would not achieve the claimed invention.

Moreover, Applicants assert that one skilled in the art would not seek to combine the folding cardboard box of Gale with the more rigid structures of Hammett or Hepp. Accordingly, such a combination of references would be improper, and it is respectfully asserted that these rejected claims would not be obvious in view of this combination. Applicants therefore request that this rejection be withdrawn.

Rejection of Claim 1, 7, 9, 10-13, 18, 20 and 22 under 35 U.S.C. § 103(a) (Gale in view of Poutiainen)

Claims 1, 7, 9, 10-13, 18, 20 and 22 are rejected as obvious over Gale in view of U.S. Patent No. 4,585,137 to Poutiainen et al. (Claims 18 and 22 are cancelled without prejudice herein.) Applicants respectfully traverse this rejection. For the same reasons provided directly above (incorporated here by reference), Gale expressly teaches away the present invention. Moreover, one skilled in the art would not seek to combine the solid, full-depth cardboard box of Gale with the open-sided and open top construction of Poutiainen's bottle hamper. The inserts of Gale would also not be needed in the bottle hamper of Poutiainen. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Rejection of Claim 5, 6, 15, 16, 23 and 24 under 35 U.S.C. § 103(a) (Gale in view of Hammett '836 or Hepp, and further in view of Apps)

Claims 5 and 6 are rejected as obvious over Gale in view of Hammett or Hepp, and further in view of Apps. Applicants respectfully traverse this rejection. For the same reasons provided above (incorporated here by reference), Gale expressly teaches away from the present invention. Moreover, Gale would not be combined with Apps to achieve the claimed language. Gale's cardboard construction would not lend itself to adding Applicant's claimed features to the outer surfaces or the bottom surface of the container, and one skilled in the art would not look to the molded plastic container of Apps to resolve it. Further, these claims are also allowable due to their dependency on their respective independent claims, for the reasons noted above. Accordingly, for these reasons, Applicants respectfully request that this rejection be withdrawn.

Rejection of Claim 13, 16, 22, and 24 under 35 U.S.C. § 103(a) (Gale in view of Apps)

Claims 13, 16, 22 and 24 are rejected as obvious over Gale in view of Apps. Applicants respectfully traverse this rejection. For the same reasons provided above (incorporated here by reference), Gale expressly teaches away from such a combination and cannot be combined with Apps to achieve the claimed divider members. These claims are also allowable due to their dependency on claim 12 and 20, also for the reasons noted above. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Rejection of Claim 21 under 35 U.S.C. § 103(a) (Gale in view of Jamison)

Claim 21 is believed to be in a condition for allowance, due to its dependency on claim 20, for the reasons noted above.

CONCLUSION

In light of the amendments and remarks provided herein, Applicants believe that the claims meet all formal and substantive requirements and that the case is in appropriate condition for allowance. Accordingly, such action is respectfully requested. The Examiner is invited to contact the undersigned if he believes that a telephone conference would expedite allowance of the case or resolve any further questions.

Respectfully submitted,

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Attachment: VERSION WITH MARKINGS TO SHOW CHANGES MADE

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

1. (Twice Amended) A crate for holding a beverage container having a lower portion and a central label area, the crate comprising:

a unitary bottom panel having an upper surface;

a first pair of opposed side walls and a second pair of opposed side walls attached to the periphery of the bottom panel to form a unitary construction therewith and defining a compartment area therein; and

a divider assembly having a plurality of divider members attached to the upper surface of the bottom panel [to form a unitary construction therewith] and extending longitudinally and transversely in the compartment area to define at least one container receiving area for receiving the beverage container therein, the divider assembly [members] including a plurality of low profile standoff portions having a container contact surface spaced from corresponding divider members, the standoff portions extending inwardly into [each] the at least one container receiving area for engaging the lower portion of the container [and for providing] to provide stability thereto [to the corresponding beverage container] and for maintaining the corresponding beverage container in a spaced relationship from the divider members.

4. (Twice Amended) The crate of claim 1, further comprising a lid member pivotably attached at least one of the first and second pair of opposed side walls, the lid member having a lid inner surface with a lid capture area formed therein corresponding to [each] the at least one container receiving area, the lid capture area sized to receive an upper portion of a respective container for providing alignment to the container.

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5. (Amended) The crate of claim 1, wherein the bottom panel has a bottom surface with a plurality of projection receiving areas formed therein.

10. (Amended) The crate of claim 1, wherein [each] the at least one container receiving area has four standoff portions extending therein for engaging the container.

12. (Twice Amended) A crate adapted to store therein a container having a central container portion having label disposed thereon and a lower portion disposed below the label, the crate comprising:

a [unitary] floor member having an upper surface with a plurality of container support portions disposed thereon;

a first pair of opposed upstanding side walls and a second pair of opposed upstanding side walls [integrally] attached to a periphery of the floor member [forming a unitary construction therewith] and defining a compartment area with the floor member; [and]

a plurality of vertically disposed divider members extending within the compartment area defining with the container support portions a plurality of container receiving areas, the divider members having a lower portion adjacent the floor member; and

at least one [container] standoff member disposed [within the compartment area] proximate the floor member and offset inwardly from the lower portion the divider members for extending into a respective one of the plurality of container receiving areas, [and integrally attached to the floor member forming a unitary construction therewith, the at least one container standoff member associated with a corresponding container support portion for defining at least one container receiving area,] the at least one [container] standoff member having a height relatively shorter than the divider members [first and second pairs of opposed upstanding side walls, the standoff member] such that it is adapted to engage the lower portion of the container and oriented such that it does not contact the label of the container.

13. (Amended) The crate of claim 12, [further comprising a first and second pair of] wherein the plurality of divider members [which] extend longitudinally and transversely in the compartment area[, respectively, to surround the at least one container receiving area].

17. (Twice Amended) The crate of claim 12, wherein the plurality of standoff members [portions] have a mating surface for engaging the container.

19. (Twice Amended) The crate of claim [13] 12, wherein the divider members have a height relatively shorter than the first and second pairs of opposed upstanding side walls.

20. (Twice Amended) A crate for retaining containers having an upper container portion and a lower container portion, the crate comprising:

a unitary floor having a periphery and an upper surface with a plurality of container support areas;

a first and second pair of opposed sidewalls extending upwardly from the floor periphery forming a unitary construction therewith and defining a compartment area;

a lid member having a first hinge portion pivotably attached to a second hinge portion of at least one of the first and second pair of opposed side walls and movable between an open and closed position, the lid member having a lid inner surface having a lid capture area formed therein corresponding to [each] a respective one of the container support areas [area], the lid capture area sized to receive therein the upper container portion of a respective one of the containers for providing alignment to the container; [and]

a plurality of divider members extending within the compartment and projecting upwardly from the floor to define container receiving areas; and

a plurality of low profile spacer members [disposed within the compartment] disposed proximate the floor and spaced inwardly from the divider members into corresponding container receiving areas such that the container support areas and [proximate] spacer members define pockets for receiving the lower container portion [container receiving areas for], the spacer members contacting the containers and spacing the containers [container] from the divider members [each other] and the sidewalls.